

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHERYL B. JOHNSON,

1:18-cv-16352-NLH-AMD

Plaintiff,

MEMORANDUM

v.

OPINION & ORDER

COOPER MEDICAL HOSPITAL and
COOPER PLAZA,

Defendants.

APPEARANCES:

CHERYL B. JOHNSON
506 SOUTH WHITEHORSE PIKE
APT. H201
STRATFORD, NJ 08084
Appearing *pro se*

HILLMAN, District Judge

WHEREAS, Plaintiff, Cheryl B. Johnson, appearing *pro se*,
filed a complaint against Defendants Cooper Medical Hospital and
Cooper Plaza;¹ and

WHEREAS, Plaintiff claims that in June 2016, Defendants
performed a mammogram which left her with scarring, and she
suffered two strokes from medication prescribed by Defendants;
and

WHEREAS, Plaintiff has filed an application to proceed

¹ Plaintiff originally filed her complaint in the Eastern
District of Pennsylvania, which transferred the action here.
(Docket No. 4.)

without prepayment of fees ("in forma pauperis" or "IFP" application), and pursuant to 28 U.S.C. § 1915(a)(1), a court may allow a litigant to proceed without prepayment of fees if she submits a proper IFP application; and

WHEREAS, although § 1915 refers to "prisoners," federal courts apply § 1915 to non-prisoner IFP applications, Hickson v. Mauro, 2011 WL 6001088, *1 (D.N.J.2011) (citing Lister v. Dept. of Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) ("Section 1915(a) applies to all persons applying for IFP status, and not just to prisoners.") (other citations omitted); and

WHEREAS, the screening provisions of the IFP statute require a federal court to dismiss an action *sua sponte* if, among other things, the action is frivolous or malicious, or if it fails to comply with the proper pleading standards, see 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); Ball v. Famiglio, 726 F.3d 448, 452 (3d Cir. 2013); Martin v. U.S. Department of Homeland Security, 2017 WL 3783702, at *1 (D.N.J. August 30, 2017) ("Federal law requires this Court to screen Plaintiff's Complaint for sua sponte dismissal prior to service, and to dismiss any claim if that claim fails to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) and/or to dismiss any defendant who is immune from suit."); and

WHEREAS, *pro se* complaints must be construed liberally, and all reasonable latitude must be afforded the *pro se* litigant,

Estelle v. Gamble, 429 U.S. 97, 107 (1976), but *pro se* litigants "must still plead the essential elements of [their] claim and [are] not excused from conforming to the standard rules of civil procedure," McNeil v. United States, 508 U.S. 106, 113 (1993) ("[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel."); Sykes v. Blockbuster Video, 205 F. App'x 961, 963 (3d Cir. 2006) (finding that *pro se* plaintiffs are expected to comply with the Federal Rules of Civil Procedure); and

WHEREAS, the Court finds that Plaintiff's complaint is deficient in two significant ways:

1. On the form complaint provided by the Court for *pro se* plaintiffs, Plaintiff claims that this Court's jurisdiction over her case - which appears to assert no federal claim but rather a state law negligence claim - is premised on the diverse citizenship of the parties. See 28 U.S.C. § 1332 (providing that a district court has jurisdiction over a matter based on the diversity of citizenship of the parties and an amount in controversy in excess of \$75,000, exclusive of interests and costs). Plaintiff, however, avers that she is a citizen of New Jersey and Defendants are citizens of New Jersey, which does not establish that Plaintiff and Defendants are diverse under § 1332. Additionally, Plaintiff has not properly pleaded the

citizenship of Defendants, which appear to be business entities, and as such, special pleading rules apply. See, e.g., 28 U.S.C. § 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business"); Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 418 (3d Cir. 2010) (the citizenship of an LLC is determined by the citizenship of each of its members, not where it has a principal place of business, or under which state's law it is established);

THEREFORE,

IT IS on this 4th day of December, 2018

ORDERED that Plaintiff's IFP application (Docket No. 1-1) be, and the same hereby is, GRANTED, and the Clerk is directed to file Plaintiff's complaint; and it is further

ORDERED that Plaintiff shall have twenty (20) days to amend her complaint to properly cure the pleading deficiencies regarding the Court's jurisdiction noted above. If Plaintiff fails to do so, this case will be dismissed for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3).

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.